



MASTER SOFTWARE AGREEMENT

-----COVER AND SIGNATURE PAGE-----

SERVICE PROVIDER: Interactive Health Technologies, LLC 1101 W. 34 th St. #213 Austin, TX 78705 Legal Notices to be sent to the attention of: <u>Ben Bentzin, CEO and Jen Ohlson, President</u>	DISTRICT: JEFFERSON COUNTY SCHOOL DISTRICT R-1 1829 Denver West Dr., Bldg 27 Golden, CO 80401 Legal Notices to be sent to the attention of: <u>Betty Handley</u>
EFFECTIVE DATE: The date of the Parties' signature. The later date if the Parties signed on different dates.	AGREEMENT INITIAL END DATE: <u>01/31/2019</u>
CONTRACT AMOUNT: <input checked="" type="checkbox"/> Varies with actual orders placed. NOT TO EXCEED \$50,000 in any contract term. <i>This is a cap. Actual orders may amount to less.</i> <input type="checkbox"/> \$ _____ for initial term <input type="checkbox"/> \$ _____ for each renewal term	DESCRIPTION: <u>Heart Rate Monitors + software</u>
FEDERAL FUNDING:	Check if NO <input type="checkbox"/> If this Box is checked, the provisions of Supplement 2 – Federal Funding are either not attached or, if attached, do not apply.

Signatures

The Parties agree to the terms and conditions set forth herein and signify their agreement with their respective signatures below. Individuals signing on behalf of each Party represent and warrant that they are authorized to execute this Agreement on behalf of the Party for which they are signing.

SERVICE PROVIDER: Interactive Health Technologies, LLC <u>Jen Ohlson</u> Signature By: <u>Jen Ohlson, President</u> Type Name and Title of Person Signing for Service Provider Date of Service Provider Representative Signature	DISTRICT: Jefferson County School District R-1 <u>Vera Kennedy</u> Signature By: <u>Vera Kennedy, CPPB</u> Type Name and Title of Person Signing for District <u>Feb 1</u> , 20 <u>18</u> Date of District Representative Signature
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The District and the Service Provider, both identified on the above Cover and Signature Page, for sufficient and valuable consideration, are entering into this Agreement as of the Effective Date listed on the Cover and Signature Page. By signing on the Cover and Signature Page, the District and the Service Provider agree to the terms and conditions of this Agreement.

BACKGROUND

The District solicited offers for the services described in this Agreement. The Service Provider responded, and the District selected the Service Provider's offer in accordance with law and District policies.

AGREEMENT TERMS AND CONDITIONS

1. **Definitions.** Capitalized terms used throughout the Agreement and any Agreement Document, which are not otherwise capitalized because of English grammar rules, shall have the meaning given to them either when first defined or in the Agreement section titled **Definitions**.
2. **Purpose and Scope.** This Agreement covers the terms and conditions under which the District is purchasing and the Service Provider is providing software, software as a service, access to web or mobile applications, or all of the above.
3. **Solicitation and Procurement.** The District solicited and procured the Services in accordance with applicable law and District policies as set forth below. The Solicitation Documents include the documents from the solicitation indicated below. The corresponding documents are business documents of the District and incorporated herein.
 - 3.1. ☒ Request for Proposal (RFP) No. 24469
 - 3.2. ☐ Request for Qualifications No. _____
 - 3.3. ☐ Request for Quote No. _____
 - 3.4. ☐ Sole Source
 - 3.5. ☐ Other under District Policy DJE
4. **Services and Statement of Work.**
 - 4.1. **Description of Services.** The Service Provider shall grant access to the Software described in **EXHIBIT A – Description of Software** attached hereto and incorporated herein.
 - 4.2. **EULA, Terms of Use, or other License Agreement.** The Service Provider grants such licenses and user permissions and provides the services under those conditions as are set forth in **EXHIBIT A.1 – Licenses and User Agreements** attached hereto and incorporated herein.
 - 4.3. **Software Orders.** The District, on behalf of the entire District or individual schools within the District, will order, from time to time while this Agreement is in effect, access to Software. To authorize the purchase of any particular Software access, the District will issue and send to the Service Provider a PO. The Service Provider will provide the Services and access as specified in each PO. This Agreement shall govern all Services obtained through PO orders. The District does not make any promises regarding the volume or dollar amounts of POs that the District will issue in any one Fiscal Year or contract term.
 - 4.4. **Standards.** The Service Provider shall perform all Services in accordance with the highest standards of care, skills and diligence in the Service Provider's industry.
 - 4.5. **ADA Web Accessibility.** The Service Provider and all Services performed under this Agreement shall comply, and at all times while this Agreement is in effect, remain in compliance, with all federal and state laws concerning equally effective and substantially equivalent ease of use for persons with disabilities, as required by the Americans with Disabilities Act of 1990 and its implementing regulations. To the extent required to allow minimum accessibility. The Service Provider shall design and implement necessary minimum enhancements surrounding ADA compliance. The District may evaluate minimum compliance and may do so by using W3C's Web Content Accessibility Guidelines (WCAG) 2.0 Level AA and the Web Accessibility Initiative Accessible Rich Internet Applications Suite (WAI-ARIA) 1.0 for web content
 - 4.6. **Credentials and Licensing.** The Service Provider shall have and, while the Agreement is in effect, maintain all professional and other licenses, certifications, and permits required for performance and shall comply with all legal and regulatory requirements applicable to the Agreement.
5. **Contract Price and Payment.**
 - 5.1. **Contract Price.** The cost of Services shall be at such prices and rates, for the fee, or for such pricing and compensation as set forth in **EXHIBIT A – Description of Software** and as set forth on each PO. The actual amounts due and payable are only as ordered by each PO and as delivered and accepted. The total amount of POs shall not exceed the amount listed on the field labeled "Contract Price" on the **Cover and Signature Page**. If the box next to "Varies with actual orders placed" is checked, then the listed amount is a cap for each contract term beyond which the Agreement does not authorize POs. This amount does not guarantee or promise that the District will issue POs up to that amount.
 - 5.2. **Invoicing.** The Service Provider shall send invoices to the District to obtain payment. Invoices shall be in form and substance acceptable to the District, and at a minimum shall describe the amounts billed, the dates of Services, and nature of Services performed or Software access provided or licensed.
 - 5.3. **Payment.** The District will pay amounts properly due and payable on accepted invoices, if the District has accepted the Services covered by the invoice as performed in accordance with this Agreement. The District may not be able to pay invoices submitted outside of the Fiscal Year in which Services are performed, or any grace period thereafter that the District may provide.
 - 5.4. **Erroneous Payments.** The Service Provider shall refund any erroneous payments it may receive.
 - 5.5. **Expense Reimbursement.** The District will reimburse the Service Provider for reasonable expenses SO LONG AS the expenses are (i) specifically described as reimbursable in **EXHIBIT A – Description of Software**; and (ii) approved by the District before the Service Provider incurs them. Notwithstanding anything to the contrary in any Agreement Document, the District will not reimburse expenses of the types and in amounts that are not reimbursable under the District's travel reimbursement policies and procedures.
 - 5.6. **Federal Funding.** The Agreement may be funded, in whole or in part, with federal grant funds. If so, **Supplement 2 – Federal Funding Provisions** attached hereto and incorporated herein shall apply, and the Service Provider certifies that, to the best of its knowledge and belief, the Service Provider, its principals, and its Subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. See System for Award Management (SAM) at <https://www.sam.gov/>.

6. Term and Renewal.

6.1. Initial Term. The Agreement shall be effective for an initial term from and including the Effective Date and ending on and including (unless terminated earlier in accordance with the terms of the Agreement) (check applicable):

- ☐ The last day of the current Fiscal Year.
- ☐ On and including (insert date): _____.
- ☐ 12 calendar months from the Effective Date.

6.2. Renewal by Agreement. The District and the Service Provider may renew the Agreement for up to 4 additional, successive renewal terms of up to 12 months each. The total term of the Agreement, including the initial term and any renewal terms, shall not exceed 5 calendar years. To enter into a renewal term, the parties may execute an **Agreement to Renew** in the form substantially equivalent to **Exhibit B – Sample Agreement to Renew** attached hereto and incorporated herein. The first executed **Agreement to Renew** shall be labeled **Exhibit B.1**. Each subsequently executed **Agreement to Renew** shall be labeled **Exhibit B.2, B.3, and B.4**, and, when executed, shall become a part of and be governed by the Agreement.

6.3. Renewal by District Option. The District, at its discretion and in lieu of Renewal by Agreement, may create a renewal term by providing written notice to the Service Provider in the form substantially equivalent to **Exhibit C – Sample Renewal Option Letter**. The first executed Renewal Option Letter shall be labeled **Exhibit C.1**. Each subsequently issued Renewal Option Letter shall be labeled **Exhibit C.2, C.3, and C.4**, and, when executed, shall become a part of and be governed by the Agreement. Performance during a renewal term created by Renewal Option Letter shall continue at the same prices and rates and under the same terms as set forth in the Agreement.

7. Insurance of Service Provider.

7.1. Requirement to Maintain Insurance. The Service Provider shall maintain at all times, while the Agreement is in effect, including during any warranty period, policies of insurance to cover liability, claims, demands, and other obligations of the Service Provider under the Agreement with the applicable minimum coverages described below. Failure to insure as required under the Agreement is a material event of default. The Service Provider shall continuously maintain all policies to cover liability, claims, demands, and other obligations of the Service Provider under the Agreement.

7.2. Subrogation Waiver. Where available, policies shall contain waivers of subrogation in favor of the District.

7.3. Carrier Requirements. All insurance carriers shall have an AM Best rating of A-VIII or better.

7.4. Certificates of Insurance. The Service Provider shall submit certificates of insurance, evidencing that the insurance required herein is in effect, no later than 10 calendar days after the Effective Date. The District's receipt, review or acceptance of any insurance policies or certificates of insurance shall not be construed as a waiver or relieve the Service Provider from its obligation to meet the insurance requirements.

7.5. Modification. Any modification, variance, or waiver of these requirements is only valid if it is in writing and approved by the District in advance.

7.6. Subcontractor Insurance Requirements. The Service Provider shall require all of its agents and Subcontractors to also comply with these insurance requirements.

7.7. Deductibles. The Service Provider shall assume all financial responsibility deductibles and self-insured retentions that may be contained in any insurance policy.

7.8. Required Coverage. The Service Provider shall maintain coverage at the following minimum coverage limits:

7.8.1. Commercial General Liability insurance, including coverage for product liability and completed operations, with limits of \$2,000,000 per occurrence/\$2,000,000 aggregate. The policy shall be primary insurance and non-contributory in relation to any insurance the District, its officers, board members, or employees may carry. The policy shall include the District, its officers, board members, and employees as additional insured. The policy shall contain a subrogation waiver in favor of the District.

7.8.2. Professional Liability insurance with limits of \$2,000,000 per claim and in aggregate. In case of any "Claims Made" policy, the Service Provider shall maintain or purchase the necessary retroactive dates and extended reporting periods to maintain such continuous coverage. Extended reporting period durations for such "Claims Made" coverage shall be carried for a period of no less than 2 years after the termination or expiration of the Agreement, or as the District may specify in writing.

7.8.3. Statutory Workers' Compensation coverage and Employer's Liability insurance with limits of not less than \$100,000 per accident, \$100,000 disease each employee, and \$500,000 accident/disease policy limit, including occupational disease provisions for all employees per statutory requirements. The Service Provider shall also require each Subcontractor to furnish workers' compensation insurance, including occupational disease provisions for all of the Subcontractors' employees, and to the extent not furnished, the Service Provider accepts full liability and responsibility for Subcontractors' employee Workers' Compensation benefits.

7.8.4. Cybersecurity insurance as set forth in the DPA.

7.8.5. ☐ If the box is checked, Comprehensive Auto Liability insurance, including hired and non-owned auto, and including coverage for all power mobile equipment used by the Service Provider on District property, with limits of \$2,000,000, per occurrence combined single limit. The policy shall be primary insurance, and any insurance the District, its officers, board members, or employees carry shall be excess and non-contributory insurance to that provided by the Service Provider. The policy shall include the District, its officers, board members, and employees as additional insured.

8. Data Protection, Security and Privacy (DPA). The Service Provider expressly agrees to and shall comply with the provisions of Supplement 1 – Data Protection Addendum (DPA) attached hereto and incorporated herein.

9. Confidentiality and Non-Disclosure.

9.1. Use of District Information. The Service Provider shall use and maintain the District Information for the sole and exclusive benefit

of the District, only as necessary to perform under the Agreement, and only in compliance with Laws. The Service Provider shall **NOT** do any of the following, unless specifically permitted by the Agreement or in writing signed by the District before the occurrence of any of the following:

- Use District Information for its own benefit;
- Publish, copy, or otherwise disclose District Information to any person not a Party;
- Use the District's name, logos, or reputation.
- Use District Data to conduct External Research, as that term is defined by District Policy IGB and IGB-R.

9.2. **Third Party Information.** In the course of performing the Services, the Service Provider may have access to information that is confidential and not public and belongs to persons not a Party and is not public, such as specifications, software code, ideas, documents or other material. The Service Provider shall not disclose this third party information to any person except as necessary to perform the Services. The Service Provider shall not violate the intellectual property or confidentiality and privacy of information rights of third parties. The Service Provider shall require its employees, agents, and Subcontractors to maintain the confidentiality of all third party information in accordance with this provision.

9.3. **Subcontractors to Do the Same.** The Service Provider shall require its employees, agents, and Subcontractors to maintain the confidentiality of District Information in accordance with this provision.

10. **Order of Precedence.** If there is a conflict or inconsistency between or among any of the Agreement Documents, it shall be resolved in the following order of priority:

- 10.1. **Supplement 1 – Data Protection Addendum (DPA);** then
- 10.2. The District Specific Provisions in the main body of the Agreement; then
- 10.3. The remainder of the main body of the Agreement; then
- 10.4. **Supplement 2 – Federal Funding Provisions** (if applicable); then
- 10.5. **EXHIBIT A – Description of Software**, together with any attachments; then
- 10.6. **EXHIBIT A.1 – Licenses and User Agreement;** then
- 10.7. The Solicitation Documents; then
- 10.8. Executed **EXHIBITS B.1, B.2,** and so on, in reverse chronological order; then
- 10.9. Executed **EXHIBITS C.1, C.2,** and so on, in reverse chronological order; then
- 10.10. **EXHIBIT B – Sample Agreement to Renew;** then
- 10.11. **EXHIBIT C – Sample Option Letter;** then
- 10.12. Any other Agreement Document (as listed under "Agreement Documents" in the Definitions section).

11. **Service Provider's Representations and Warranties.** The Service Provider represents and warrants that the Service Provider:

- 11.1. Is competent and qualified to and capable of performing the Services.
- 11.2. Maintains the licensing, certificates, and other credentials required by law and by the District to perform the Services.
- 11.3. Has full authority under applicable law to execute and deliver the Agreement and has the authority to perform all of the obligations under the Agreement.
- 11.4. Was truthful and correct, to the best of its knowledge as of the time when made, in making any statement, representation, or information, in connection with the Agreement and the Services, on which the District has relied in the award of the Agreement.

12. **Termination, Default, and Remedies.**

- 12.1. **Termination – No Default.** The District may terminate the Agreement at any time, if the District determines that termination is in its best interest. If the District elects to terminate under this provision, the District will send written notice to the Service Provider. The notice will state on what date termination will become effective. That date shall not be less than 10 calendar days after the Service Provider receives the notice. The District will pay the Service Provider the sums earned and not yet paid up to the date of termination. The District will not pay for loss of anticipated profits.
- 12.2. **Events of Default by Service Provider.** Each of the following is an event of default:
 - 12.2.1. The Service Provider does not perform the Services as agreed; or
 - 12.2.2. The Service Provider does not comply with any provision of the Agreement or any Agreement Document; or
 - 12.2.3. A representation or warranty in this Agreement is or was not true as of the date made; or
 - 12.2.4. The Service Provider loses a license or other credential or qualification that is required to perform under this Agreement; or
 - 12.2.5. The Service Provider becomes a debtor in any proceeding in bankruptcy, whether voluntary or involuntary, or is the subject of any other insolvency proceeding or appointment for the benefit of creditors, and any such proceeding remains un-dismissed for more than 60 calendar days; or
 - 12.2.6. The Service Provider is convicted of a crime that renders the Service Provider no longer able or permitted to perform Services; or
 - 12.2.7. The District determines in its sole discretion that the Service Provider's actions or inaction, or the action or inaction of any of the Service Provider's employees, agents, or Subcontractors, is a threat or danger to the District or any of the District Constituents.
- 12.3. **Notice of Default.** When there is an event of default and the District to exercise its remedies and rights, the District will give notice to the Service Provider. The notice will state the nature of the event of default, what actions the Service Provider needs to take to cure the default, the dates when the Service Provider has to complete the cure, and the action the District intends to take if the Service Provider does not cure. The District need not give prior notice of default if the District determines in its sole discretion that the nature of the default or other occurrence is an immediate threat or danger to the District or District Constituents. In that case, the District will inform the Service Provider of any remedies the District has taken within 30 calendar days after the District has taken such action.
- 12.4. **District Remedies.** In the event of default, and after the District has given notice and opportunity to cure where required,

and if the Service Provider does not cure the default as required by the District, the District may avail itself of any remedies available to it by law and take, or elect not to take, any of the following actions, concurrently or consecutively, as the District in its sole discretion may decide:

- 12.4.1. Terminate the Agreement or any part thereof. To the extent terminated, the Service Provider shall stop all work. The Service Provider shall complete and deliver to the District all work not cancelled by the termination notice. The District will pay only for accepted Services performed before termination.
- 12.4.2. Suspend the Service Provider's performance pending corrective action as the District may specify. The Service Provider shall cease all performance as the District may direct and will not be entitled to an adjustment in price or performance schedule.
- 12.4.3. Withhold payment to the Service Provider pending cure by the Service Provider.
- 12.4.4. Deny payment for Services not performed, or for Services that due to the Service Provider's actions or inactions cannot be performed, or, if they were performed, are of no value to the District. Denial of payment will be equal to the value of the obligations or Services not performed.
- 12.4.5. Removal. Demand immediate removal, or cause, on the District's own initiative, immediate removal of the Service Provider or any of the Service Provider's employees, agents, Subcontractors, or Subcontractors' agents or employees, if the District determines that removal is necessary to (i) preserve the safety or security of the District or District Constituents, or (ii) to prevent, respond to, or defend against any threat, assault, negligent or careless act, or otherwise inappropriate or dangerous behavior on District property or premises.
- 12.4.6. Purchase Cover. Purchase goods and services to complete or continue the Services. The Service Provider shall pay to the District, upon demand, all costs that the District incurs as a result, less any contract sums that the District is not paying to the Service Provider under the Agreement on account of the event of default and the remedy or remedies the Service Provider elects.
- 12.4.7. Purchase Insurance Coverage. If the Service Provider does not obtain or maintain insurance policies with coverages required by this Agreement, the District may, to the extent available or possible, purchase or renew any policy on behalf of the Service Provider or Subcontractor to achieve required coverage. The Service Provider shall pay to the District, upon demand, all costs that the District incurs as a result. The District may offset the costs so incurred against any payments due to the Service Provider under this Agreement and any other money that the District may owe to the Service Provider.
- 12.4.8. Intellectual Property Preservation. If, in the performance under the Agreement, the Service Provider infringes on an Intellectual Property right, the Service Provider shall, as approved by the District, (a) secure that right to use such work for the District or the Service Provider; (b) replace the work with non-infringing work or modify the work so that it becomes non-infringing; or, (c) remove any infringing work and refund the amount paid for such work to the District.
- 12.5. Obligations at Termination. When the Agreement terminates for any reason, and in addition to all other duties under the Agreement and any Agreement Document, the Service Provider shall do the following:
 - 12.5.1. Take timely, reasonable, and necessary action to protect and preserve property in the possession of the Service Provider and in which the District has an interest; and
 - 12.5.2. At the District's request, return Materials and tangible objects owned by the District in the Service Provider's possession at the time of any termination; and
 - 12.5.3. Deliver to the District all completed Work Product, if any, and all Work Product that was in the process of completion, if any; and
 - 12.5.4. As directed by the District, deliver and return to the District all District Information, or securely destroy all District Information so as to make it permanently irretrievable (and certify as to such secure destruction).
- 12.6. Prepayment Refund. The Service Provider will refund any sums that the District has prepaid and that remain unearned at the time of termination within 45 calendar days after termination, except as the Parties may otherwise agree in writing.

13. General Contract Terms.

- 13.1. Assignment. The Service Provider may assign or subcontract its rights and obligations hereunder only with the express prior written consent of the District
- 13.2. Binding Effect. This Agreement shall be binding upon the Parties and their respective successors and assigns.
- 13.3. Captions and References. The captions and headings are for reference only and shall not define or limit its provisions.
- 13.4. Compliance with Laws. The Service Provider shall comply with all laws that govern or in the future will govern the Agreement and the Service Provider's performance thereunder.
- 13.5. Counterparts. The Agreement, and any amendments, may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, facsimile or scanned signatures shall be as valid as the original.
- 13.6. Conflict of Interest. The Service Provider hereby acknowledges that it (i) has no personal or financial interest in the Agreement (other than any payment or fee to be earned thereunder); (ii) shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance under the Agreement; and (iii) does not and will not employ or engage any person with a personal or financial interest in the project requiring the Services under the Agreement.
- 13.7. Entire Understanding. The Agreement represents the complete integration of all understandings between the Parties related to the Services and the subject matter of this Agreement.
- 13.8. Governing Law, Jurisdiction and Venue. The Agreement is made in and shall be governed by the laws of the State of Colorado. A Party shall bring any action to enforce its rights hereunder in a court of competent jurisdiction in Jefferson County, Colorado. All references to Law refers to the Law as in effect on the Effective Date. Any changes to Law after the

Effective Date is hereby incorporated into the Agreement.

- 13.9. **Independent Contractor.** The Service Provider is an independent contractor and NOT an employee of the District. Employees and Subcontractors of the Service Provider are NOT employees of the District. The Service Provider shall perform all Services using independent judgment and expertise as an independent contractor. The District does not require the Service Provider to work exclusively for the District. The Service Provider shall deliver the Services in accordance with the plans and specifications set forth herein, and the District does not oversee the Service Provider's actual work or instruct the Service Provider as to how the Service Provider performs the Services. This Agreement may be terminated only in accordance with the terms of this Agreement. The District does not provide training (other than minimal), tools or benefits to the Service Provider, except that the District may supply materials and equipment as specified herein. Payment under the Agreement is in accordance with the contract rate or price set forth herein, and shall not be in the form of a salary or hourly wage. The District does not dictate the time of performance, except to the extent a completion schedule or work hours are established in this Agreement. The District will make payments to the Service Provider in its trade or business name. The District does not combine business operations in any way with the Service Provider's business but maintains District operations separate and distinct from the Service Provider's operations. Neither Party is or shall be construed to be, a partner or in joint venture with the other Party. Neither the Service Provider nor any agent, employees, Subcontractor, or Subcontractor's agent or employee has any authority, express or implied, to bind the District to any agreement or incur any liability attributable to the District. **Service Provider acknowledges that it is not entitled to Unemployment Compensation or Workers' Compensation benefits (unless coverage is provided by the Service Provider or other entity) and that Service Provider is obligated to pay federal and state income tax on any moneys earned from the District pursuant to the Agreement.** The District is not obligated to and will not pay federal, state, or local payroll taxes or make any payroll tax withholdings from payments made to the Service Provider, if any. The District will comply with all applicable tax reporting laws.
- 13.10. **Limitation of Liability – No Effect on Insurance Coverage.** Any provision in the Agreement, an Agreement Document or a Vendor Agreement limiting the Service Provider's liability (if any) shall not affect or decrease any insurance coverage or coverage limits otherwise available. Any provision in a Vendor Agreement seeking to limit or disclaim the Service Provider's liability shall not apply to this Agreement. The provisions of this subsection survive the termination of the Agreement.
- 13.11. **Modification.** The Agreement can only be modified in writing executed by both Parties or as otherwise provided in the Agreement.
- 13.12. **Notices.** All notices required under the Agreement shall be in writing and shall be effective (i) upon personal delivery, or (ii) 3 calendar days after mailing when deposited in the United States first-class mail, postage prepaid, or (iii) when delivered, as such delivery is evidenced by a mailing tracking number, if mailed with an overnight or other tracked service (such as USPS Priority or ESPS Express, FedEx, or UPS), or (iv) when sent by electronic mail, or (v) when transmission is confirmed by facsimile. Notices shall be sent to the Parties' respective addresses on the Cover and Signature page. Notice by paper letter mail or personal delivery shall be effective at all times. Notice by email or facsimile shall be effective only if the Parties agree and designate in writing email addresses or facsimile numbers for that purpose. Each Party may change their respective notice address and other information without amending this Agreement by sending a notice to the other Party, designating the new notice address and information.
- 13.13. **Notification of Legal Process.** In the event the Service Provider becomes subject to legal process (e.g. without limitation, subpoenas, interrogatories, or pleadings) that relates to the Agreement or the Service Provider's performance under the Agreement or compels or will compel the Service Provider to disclose District Information, the Service Provider shall notify the District in writing within 7 calendar days after it receives such legal process. The notice shall include sufficient information for the District to take timely legal action to prevent disclosure and protect District Information (such as motions to quash) the District may choose to take in its sole discretion. The provisions of this subsection survive the termination of the Agreement.
- 13.14. **No Third-Party Beneficiaries.** Nothing in the Agreement shall be construed to give any rights or benefits to anyone other than the Parties.
- 13.15. **Records and Audits.** **Records and Audits.** The Service Provider shall maintain complete and accurate records of all charges incurred by the District under the Agreement, in accordance with generally accepted accounting principles, and other record related to the Agreement and performance thereunder, for a period of 36 months from the date of termination of the Agreement or as otherwise required by law. The Service Provider shall permit the District to audit and inspect Service Provider's records relating to the Agreement upon reasonable notice, and to retain copies thereof.
- 13.16. **Rights in and Use of Work Product.** The Service Provider assigns to the District, and its successors and assigns, the entire right, title and interest in the Work Product, if any.
- 13.17. **Severability.** If any provision of the Agreement is ruled to be invalid or illegal, such ruling shall have no effect upon the remaining provisions, which shall be considered legally binding and given full effect.
- 13.18. **Subcontracts.** The Service Provider shall, upon the District's request, provide (i) a list of all Subcontractors and (ii) a copy of each contract related to the performance under the Agreement with each such Subcontractor. All subcontracts entered into by the Service Provider in connection with the Agreement shall comply with all applicable Laws, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of the Agreement.
- 13.19. **Survival of Certain Agreement Terms.** Any provision of the Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and is enforceable by the other Party.
- 13.20. **Waiver.** A Party's failure to assert any rights or remedies, or a Party's waiver of its rights or remedies by a course of dealing or otherwise, shall not be deemed to be a waiver of any other right or remedy under the Agreement, unless such waiver of such right or remedy is contained in a writing signed by the Party alleged to have waived their other rights or

remedies.

14. District Specific Terms.

- 14.1. *Availability of Funds and Constitutional Limitations on Debt.* Financial obligations of the District payable after the current Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The District may also be relying on state or federal funding to satisfy its payment obligations under the Agreement. The District's payment obligations under the Agreement are subject to and conditioned upon the continuing availability of all funding for the purposes set forth in the Agreement. In the event funds are not appropriated, budgeted or otherwise made available, the District may terminate the Agreement as of the last day of the period for which funds were appropriated or monies made available for such purposes. All payments of the District under this Agreement constitute currently budgeted expenditures and do not constitute or give rise to a general obligation, indebtedness, or multiple-fiscal year direct or indirect debt or other financial obligation within the meaning of any constitutional or statutory provision or limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the District's monies. No provision of this Agreement shall be construed to restrict the future issuance of any bonds or obligations of the District payable from any class or source of District moneys.
- 14.2. *Compliance with Laws and District Policies. Non-Discrimination.* The Service Provider shall comply with all applicable Laws. The Service Provider shall comply with District policies and procedures that apply to performance under the Agreement, as amended from time to time. Specifically, the Service Provider shall comply with Laws and District policies (1) prohibiting the use or possession of alcohol, tobacco or firearms on District property; (2) related to web access; and (3) prohibiting discrimination, intimidation, or harassment on the basis of ethnicity or race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, genetic information, age, veteran status, or disability.
- 14.3. *Criminal Record Certification.* Where required by Laws, the Service Provider shall complete a criminal records check on itself, if an individual, and any Service Provider employee, agent, or Subcontractor providing the Services on District property under the Agreement. The Service Provider, if an individual, and Service Provider's employees, Subcontractors, or other agents of the Service Provider, who have been convicted of, pled nolo contendere to, or received a deferred sentence or deferred prosecution for a felony, or a misdemeanor crime involving unlawful sexual behavior or unlawful behavior involving children, shall not be allowed to work on District property. The Service Provider shall complete the District's Criminal Records Check Certification upon the District's request. The Service Provider shall be responsible for complying with applicable privacy and confidentiality laws relating to the certification.
- 14.4. *District Data.* In the course of performing the Services, the Service Provider may gain access to District Data, even though the Services **may not** require it. In this case, the Service Provider shall comply with the requirements in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 CFR Part 99, concerning the confidentiality and release of student records and data, as reflected in District Policy JRA/JRC; and with the provisions of 20 U.S.C. § 1232h, as reflected in District Policy JLDAC, concerning the need to obtain written consent of the parent prior to subjecting a student to a certain manner of survey, analysis, or evaluation, and concerning the provision of psychological services. The Service Provider shall comply with the Colorado Student Data Transparency and Security Act, C.R.S. §§ 22-16-101 *et seq.*, as applicable. The Service Provider acknowledges that under applicable law, regulation and policy, officers, employees, and agents who access the education records and personally identifiable information of District students may use such information only for the purposes of providing Services under the Agreement; that the Service Provider is prohibited from re-disclosing such information to third parties and shall use reasonable methods to ensure to the greatest extent practicable that such records and data are protected from further disclosure; and that Service Provider shall destroy any such information when the Agreement is terminated or when the information is no longer needed to provide the Services.
- 14.5. *Governmental Immunity.* No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101 *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).
- 14.6. *Indemnification from Service Provider.* The Service Provider shall indemnify, defend, and hold the District, and its employees, agents, and members of the governing board ("Indemnified Persons") harmless against any and all costs, expenses, claims, actions, damages, liabilities, court awards, and other amounts (including attorney's fees, court costs, and related costs) ("Claims") incurred by any of the Indemnified Persons in connection with (i) any act or omission by the Service Provider related to the Agreement; (ii) any act or omission by the Service Provider's employees, agents, Subcontractors, or assignees related to the Agreement; (iii) the Work Product (if any); or (iv) performance under the Agreement. In the event any Work Product, Materials, or the performance of the Services are covered by or infringe upon any Intellectual Property, the Service Provider shall indemnify and defend the Indemnified Persons and hold the Indemnified Persons harmless against all Claims resulting from such Intellectual Property based on actual or alleged manufacture, sale or use of Work Product, Services or Materials in violation, infringement or the like of Intellectual Property rights of others. The provisions of this section shall survive the termination of the Agreement.
- 14.7. *Indemnification by District Void.* Notwithstanding anything to the contrary in the Agreement, an Agreement Document, or a Vendor Agreement, the District shall not indemnify the Service Provider. Any provision in an Agreement Document or a Vendor Agreement attempting to require that the District indemnify the Service Provider or any other party is null and void *ab initio*.
- 14.8. *Open Records Law/CORA.* The Colorado Open Records Act, CRS § 24-72-10 *et seq.*, as amended from time to time, applies to the Agreement, the Service Provider's performance, and the records and reports generated thereunder, to the extent not prohibited by federal law.
- 14.9. *Public Contracts for Services.* This provision is required by C.R.S. §§8-17.5-101 *et seq.* Service Provider certifies that it

shall comply with the provisions of C.R.S. §8-17.5-101 *et seq.* Service Provider shall not knowingly (i) employ or contract with an illegal alien to perform work under the Agreement, (ii) enter into a contract with a Subcontractor that knowingly employs or contracts with an illegal alien to perform work under the Agreement, or (iii) enter into a contract with a Subcontractor that fails to contain a certification to Service Provider that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement, Service Provider also represents and warrants that Service Provider has confirmed and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to C.R.S. §8-17.5-102(5)(c). Service Provider shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. When the Service Provider has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, the Service Provider shall (i) notify its Subcontractor and the District within 3 days and (ii) terminate the subcontract with the Subcontractor if the Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice (unless the Subcontractor during those 3 days provides information to establish that the Subcontractor has not knowingly employed or contracted with an illegal alien). Service Provider shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. The District may terminate the Agreement if the Service Provider does not comply with this provision or the requirements of C.R.S. §§8-17.5-101 *et seq.* C.R.S. §8-17.5-101 *et seq.*, and the Service Provider shall be liable for actual and consequential damages to the District.

14.10. **Public Contracts with Natural Persons.** This provision is required by C.R.S. §24-76.5-101 *et seq.* If Service Provider is a natural person 18 years of age or older, Service Provider hereby swears and affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law; (ii) shall comply with the provisions of C.R.S. §24-76.5-101 *et seq.*, and (iii) has produced one form of identification required by C.R.S. §24-76.5-103, before the Effective Date.

14.11. **PERA Contributions.** If the Service Provider is a Colorado Public Employees Retirement Association (PERA) retiree or employs Colorado PERA retirees in performance of the Agreement, they must inform the District of this status. The District will make any employer PERA contributions that are required by legislation. The Service Provider or the Service Provider's employee who is a Colorado PERA retiree will be responsible to pay any working retiree contributions to PERA that are required by legislation.

14.12. **Taxes and Fees.** The District is exempt from the payment of any state, and most municipal, sales and use taxes for materials, supplies, and equipment used in the performance under the Contact, and may be exempt from federal and other taxes. The Service Provider shall not include any of these taxes in any charges or invoices to the District. The Service Provider shall pay, at its own expense, all applicable taxes and fees in the execution of the terms of the Agreement, including but not limited to excise tax, federal and state income taxes, payroll and withholding taxes, unemployment taxes, and worker's compensation payments for its employees, and shall indemnify and hold the District harmless for all claims arising under such taxes and fees.

15. **Definitions.** In addition to other capitalized terms defined elsewhere in the Agreement or Agreement Documents, the following terms shall have the following meanings:

15.1. **"Agreement"** means this Master Software Agreement, together with all Agreement Documents.

15.2. **"Agreement Documents"** means each and the combination of the following parts of the Agreement, as they may be attached, all of which together form one agreement:

15.2.1. The main body of the Agreement.

15.2.2. **EXHIBIT A – Description of Software**, including any attachments, such as, without limitation, those incorporating Solicitation Documents.

15.2.3. **EXHIBIT A.1 – Licenses and User Agreements** (if any).

15.2.4. **EXHIBIT B – Sample Agreement to Renew.**

15.2.5. **EXHIBIT C – Sample Option Letter to Renew.**

15.2.6. **Supplement 1- Data Protection Addendum (DPA)** (if any).

15.2.7. **Supplement 2 – Federal Funding Provisions** (if any).

15.2.8. Each executed **EXHIBIT B.1, B.2** and so on.

15.2.9. Each executed **EXHIBIT C.1, C.2** and so on.

15.2.10. Other (none if blank): _____

15.3. **"District Constituents"** means the District and its employees, board members, officers, agents, students, parents of District students, school visitors, and school communities.

15.4. **"District Data"** means District Data as defined in the **DPA**.

15.5. **"District Information"** means any and all information, data, record, specification, software code, ideas, documents, District Data (if any), or other material, in any form and on any media, including but not limited, to any such information that may belong to or affect third persons not a Party, which the Service Provider receives from the District.

15.6. **"DPA"** means the provisions of **Supplement 1 – Data Protection Addendum (DPA)**, which is attached hereto and incorporated herein.

15.7. **"Effective Date"** means the date when the Parties execute this Agreement and is the later date if the Parties sign on different dates.

15.8. **"Fiscal Year"** means the 12 months' period that starts on July 1 of each calendar year and ends on June 30 of the following calendar year.

15.9. **"Intellectual Property"** means all intellectual property, including without limitation, patent, copyright, trademark, trade

secret, trade dress, or application therefor, and all work and rights derived therefrom.

- 15.10. "Laws" means all state, federal, and local laws, statutes, regulations. Rules, code provisions, and case law, and includes the policies of the District and the District board.
- 15.11. "Materials" means all labor, licenses, materials, supplies, equipment, and all other items necessary to complete, perform and deliver the Services.
- 15.12. "Party" means the District or the Service Provider, and the plural means both the District and the Service Provider.
- 15.13. "PO" means a purchase order document in form and substance as the District uses in the ordinary course of its business to order goods and services and encumber funds.
- 15.14. "Services" means the services and work the Service provider is performing in accordance with the Agreement and under **EXHIBIT A – Description of Software**, and shall include all goods and materials the Service Provider acquires and uses to perform the Services.
- 15.15. "Solicitation Documents" means the District's request for proposal, request for qualifications, request for quote, or other documentation of the method of solicitation the District used to select the Service Provider, and any response and proposal of the Service Provider thereto.
- 15.16. "Software" means software, software as a service, remote-hosted services, internet websites, online services, online applications, mobile applications and related services.
- 15.17. "Subcontractor" means persons not a Party that the Service Provider engages to aid in the performance under the Agreement.
- 15.18. "Vendor Agreement" means any form of agreement or documentation prepared and provided by the Service Provider and relating to the Agreement or the Services, and may include, without limitation, an on-line agreement, proposal, or invoice, whether made a part of the Agreement or effective or purporting to be effective outside of or in addition to the Agreement.
- 15.19. "Work Product" means work product produced or created by the Service Provider specifically and exclusively for the District in performing the Services and all work based on, derived from, or incorporating the work product, together with the tangible and intangible results of the Services, whether finished or unfinished, including drafts. "Work Product" includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the work. "Work Product" DOES NOT include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the work.

EXHIBIT A – Description of Software: IHT

The IHT Spirit software, adidas Zone optical wrist heart rate monitor the only integrated hardware-software technology on the market today developed specifically for children (students) and specifically for physical education and overall education. The adidas Zone uses the Phillips Optical Medical sensor to measure student heart rate from the wrist with the researched accuracy of a chest-based heart rate monitor.

The optical wrist monitor stores the data delivered by the sensor until the end of class or workout session, when the student “returns” the monitor and transfers the data through the hub/data reader.

The software reviews and analyzes the student’s heart rate data against individual student goals and activity goals, set by either the teacher or student. Students, teachers and parents receive a heart rate report automatically and immediately via email as soon as the session or class is over.

By receiving the report, the student can review and personally evaluate their own performance, answer a teacher initiated journal question, and make an individual plan for improvement through self-assessment. Reports also prompt a social and emotional response, asking students “How do you feel after your workout?” This social and emotional data can tie into and be tracked over time into each student’s overall wellness portfolio stored in the IHT Spirit software daily-to-yearly.

The Spirit software houses a teacher’s/district’s unique curriculum and integrates with district learning management systems such as Campus or Google Docs. The software can automate class and student rosters on a nightly basis to eliminate the roster import and logistical set up, or ongoing roster updates throughout the semester for teachers. IHT provides extensive teacher and student curriculum resources and ongoing professional development at no cost to optimize the use of the technology and sustainability.

With this holistic eco-system for monitoring, reporting, and collecting heart rate and other key student growth data, as well as an overall classroom management solution, the software enables students, teachers and administrators to track progress over time, daily-to-yearly, from K-12. The software provides unprecedented feedback for students to take ownership for their personal growth by using higher order thinking skills and evaluating their own personal achievements for both short term and long-term goals.

Teachers and administrators can aggregate and correlate data from many other data sets to show achievement of goals such as social and emotional and academic outcomes, create rubrics for increasing positive nutritional behaviors and measure behaviors and trends in pre-and post-fitness testing. The Spirit software also assesses average class minutes of moderate-to-vigorous physical activity at the same intervals to document program effectiveness.

Data is collected at the individual, class, school, district and multi-district (state) levels. The IHT Spirit software can capture and track data during physical education classes, as well as outside of PE class, such as for “make-up PE”, homeschooling, before and after school programs, recess, academic classroom “brain-breaks”, and virtual/online PE. IHT has also seen immense impact when our technology is used with special needs students to help manage their emotions and fitness while connecting to parents in a way never before available through daily reports and communication.

The IHT Spirit System unites teachers and students as a collective group while still empowering them individually. It educates and engages all stakeholders including parents, students, teachers, administrators, legislatures and the community, and goes beyond solely a “PE” solution into a district-wide, comprehensive physical activity model that impacts a “whole child” approach to education.

☒ If this box is checked, pricing will be as the Service Provider quotes to the District, and the District accepts, at the time of each order.



Interactive Health Technologies, LLC 2017 Price List

Spirit System Wrist Heart Rate Components

adidas Zone for IHT Spirit Wrist HRM - regular strap.....	\$149.00
adidas Zone for IHT Spirit Wrist HRM - large strap	\$149.00
IHT Spirit Classroom Reader	\$199.00
adidas Zone for IHT Spirit Charging Case.....	\$299.00
Personal adidas Zone for IHT Spirit Charger	\$29.00
IHT Fit Wipes (4 large rolls + 1 container)	\$160.00
IHT Spirit Banner	\$100.00
IHT Spirit Personal Package	\$169.00
<i>Includes 1 adidas Zone for IHT Spirit Wrist HRM; 1 Personal adidas Zone for IHT Spirit Charger; 3-Year Spirit Heart Rate Software License and Quick Start Guide.</i>	

Spirit System Chest Heart Rate Components

Spirit Heart Rate Monitor (single).....	\$89.00
IHT Spirit Classroom Reader	\$199.00
Spirit Monitor Strap (XS, S, M, L).....	\$9.85
Spirit HRM Storage Bag	\$99.00
Elastic Strap Bags.....	\$45.00
3 Year Service Policy	\$95.00

Spirit System Software

3-Year Spirit Assessment Software Package per location ...	\$1,400.00
<i>(Includes initial setup, class roster management, 2-hour Training Webinar)</i>	
3-Year Spirit Assessment Software Package per location ...	\$1,000.00
<i>(Includes initial setup, 2-hour Training Webinar)</i>	
3-Year Spirit Heart Rate Software Package per location	\$900.00*
<i>* Free with purchase of adidas Zone Package</i>	

1-Year Spirit Assessment Software Package per location	\$400.00
<i>(Includes initial setup, 2-hour Training Webinar)</i>	
3-Year Renewal License - Software only	\$900.00
1-Year Renewal License - Software only	\$300.00
Class Roster Management per year, per location	\$150.00

Training

Introductory Webinar (1-2 hours)	\$500.00
On-site One Day Training, One Trainer	\$2,500.00
On-site One Day Training, Additional Trainer	\$750
On-site Two Day Training, One Trainer	\$3,900.00
On-site Two Day Training, Additional Trainer	\$1,500.00

IHT Spirit Curriculum

Printed Copy Curriculum Teacher's Manual	\$0.00
<i>(Free download)</i>	
Printed Spirit Curriculum Student Journal & Workbook	\$0.00
<i>(Free download)</i>	
IHT Spirit Curriculum License	\$1,000.00*
<i>* - no charge when purchased with heart rate monitor package</i>	

Storage and Additional Items

Storage Cart.....	\$480.00
Heart Rate Monitor Gel.....	\$20.00
Dell Windows 10 Touchscreen Laptop	\$950.00
Health Needs A Hero - Student Version.....	\$34.99
Health Needs A Hero - Full Length Version	\$24.99

EXHIBIT A.1 – Licenses and User Agreements

End User License Agreement for IHT Software

This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Interactive Health Technologies, LLC ("IHT") for the IHT software that accompanies this EULA, which includes associated media and IHT Internet-based services ("Software"). An amendment or addendum to this EULA may accompany the Software. **YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR USING THE SOFTWARE.**

1. GRANT OF LICENSE. IHT grants you the following rights provided that you comply with all terms and conditions of this EULA:

1.1 INSTALLATION AND USE. You may install and use an unlimited number of copies of the Software on personal computers or other devices per system.

1.2 LICENSE GRANT FOR REPORTS. The Software allows customized reporting. You may copy and modify reports and all data associated with reporting as part of the Software and distribute such templates and reports along with your modifications for use by other licensees of the Software; provided however that you may **not** sell, resell, license, rent, lease, lend, or otherwise transfer for value, the reports and templates. You must indemnify and defend IHT against any claims or lawsuits, including attorneys' fees that arise from or result from the licensing or distribution of the templates as modified by you.

1.3 LICENSE GRANT FOR DOCUMENTATION. The documentation that accompanies the Software is licensed for internal, non-commercial reference purposes only.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. You may not use any IHT Internet-based services associated with the Software in any manner that could damage, disable, overburden, or impair such services or interfere with any other party's use and enjoyment of them. You may not attempt to gain unauthorized access to any service, account, computer systems or networks associated with the Internet-based services.

3. RESERVATION OF RIGHTS AND OWNERSHIP. IHT reserves all rights not expressly granted to you in this EULA. The Software is protected by copyright and other intellectual property laws and treaties. IHT or its suppliers own the title, copyright, and other intellectual property rights in the Software. **The Software is licensed, not sold.** This EULA does not grant you any rights to trademarks or service marks of IHT.

4. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION, AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by this EULA or applicable law notwithstanding this limitation.

5. CONSENT TO USE OF DATA. You agree that IHT and its affiliates may collect and use technical information gathered as part of the product support services provided to you, if any, related to the Software. IHT may use this information solely to improve our products or to provide customized services or technologies to you and will not disclose this information in a form that personally identifies you.

6. LINKS TO THIRD PARTY SITES. IHT is not responsible for the contents of any third-party sites or services, any links contained in third-party sites or services, or any changes or updates to third-party sites or services. IHT is providing these links and access to third-party sites and services to you only as a convenience, and the inclusion of any link or access does not imply an endorsement by IHT of the third-party site or service.

7. ADDITIONAL SOFTWARE/SERVICES. This EULA applies to updates, supplements, add-on components, or Internet-based services components, of the Software that IHT may provide to you or make available to you after the date you obtain your initial copy of the Software, unless they are accompanied by separate terms.

8. EXPORT RESTRICTIONS. You acknowledge that the Software is subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end- user, end- use, and destination restrictions issued by U.S. and other governments.

9. TERMINATION. Without prejudice to any other rights, IHT may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the Software and all of its component parts.

10. WARRANTY FOR SOFTWARE ACQUIRED IN THE US. IHT warrants that the Software will perform substantially in accordance with the accompanying materials throughout the duration of this EULA. No warranty is offered for Software purchased outside of the United States.

This Warranty gives you specific legal rights. You may have other rights which vary from state to state.

11. YOUR EXCLUSIVE REMEDY. IHT's and its suppliers' entire liability and your exclusive remedy for any breach of this Limited Warranty or for any other breach of this EULA or for any other liability relating to the Software shall be, at IHT's option from time to time exercised subject to applicable law, (a) return of the amount paid (if any) for the Software, or (b) repair or replacement of the Software, that does not meet this Limited Warranty and that is returned to IHT with a copy of your receipt. You will receive the remedy elected by IHT without charge, except that you are responsible for any expenses you may incur (e.g. cost of shipping the Software to IHT). This Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use or a virus. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer, and IHT will use commercially reasonable efforts to provide your remedy within a commercially reasonable time of your compliance with IHT's warranty remedy procedures. To exercise your remedy, contact: IHT at 1101 W 34th Street, Suite 213, Austin, TX 78705, spirit@ihtusa.com.

12. DISCLAIMER OF WARRANTIES. The Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties or similar obligations (if any) created by any advertising, documentation, packaging, or other communications. **Except for the Warranty and to the maximum extent permitted by applicable law, IHT and its suppliers provide the Software and support services (if any) AS IS AND WITH ALL FAULTS, and hereby disclaim all other warranties and conditions, whether express, implied or statutory, including, but not limited to, any (if any) implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Software, and the provision of or failure to provide support or other services, information, software, and related content through the Software or otherwise arising out of the use of the Software. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, QUIET POSSESSION, CORRESPONDENCE TO DESCRIPTION OR NON- INFRINGEMENT WITH REGARD TO THE SOFTWARE.**

13. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL IHT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF IHT OR ANY SUPPLIER, AND EVEN IF IHT OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. LIMITATION OF LIABILITY AND REMEDIES. Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced herein and all direct or general damages in contract or anything else), the entire liability of IHT and any of its suppliers under any provision of this EULA and your exclusive remedy hereunder (except for any remedy of repair or replacement elected by IHT with respect to any breach of the Limited Warranty) shall be limited to the greater of the actual damages you incur in reasonable reliance on the Software up to the amount actually paid by you for the Software or US\$5.00. The foregoing limitations, exclusions and disclaimers (including Sections 11, 12 and 13) shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

15. U.S. GOVERNMENT LICENSE RIGHTS. All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995 is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995 is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.

16. APPLICABLE LAW. This EULA is governed by the laws of the State of Texas.

17. ENTIRE AGREEMENT; SEVERABILITY. This EULA (including any addendum or amendment to this EULA which is included with the Software) is the entire agreement between you and IHT relating to the Software and the support services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA. To the extent the terms of any IHT policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.

EXHIBIT B – AGREEMENT TO RENEW

Agreement to Renew

The Parties to that certain MASTER SOFTWARE AGREEMENT by and between **Interactive Health Technologies, LLC**, and **Jefferson County School District R-1**, effective on agreement (“Agreement”) hereby agree to renew the Agreement for:

- ☒ One year, with a new termination date of one year after contract agreement.
☐ _____ months, with a new termination date of _____.

Changes to the Agreement: In addition, the Parties make the following changes to the Agreement:

All provisions of the Agreement not specifically amended herein shall remain in effect unchanged.

SERVICE PROVIDER:

Interactive Health Technologies, LLC

Signature

By: _____

Name and Title of Person Signing for Service Provider

October 23, 2017

Date of Service Provider Representative Signature

DISTRICT:

Jefferson County School District R-1

Signature

By: _____

Name and Title of Person Signing for District

Date of District Representative Signature

EXHIBIT C – SAMPLE RENEWAL OPTION LETTER

☐ 1st ☐ 2nd ☐ 3rd ☐ 4th

District's Option to Renew

In accordance with the provisions of that certain MASTER SOFTWARE AGREEMENT by and between _____, and **Jefferson County School District R-1**, effective _____ ("Agreement"), the District hereby exercises its option to renew the Agreement for:

- ☐ One additional year, with a new termination date of _____.
- ☐ _____ months, with a new termination date of _____.

All other terms and provisions of the Agreement remain in effect unchanged.

DISTRICT:

Jefferson County School District R-1

SAMPLE

Signature

By: _____

Name and Title of Person Signing for District

SAMPLE, 20____

Date of District Representative Signature

SUPPLEMENT 1 DATA PROTECTION ADDENDUM (DPA)

This **Supplement 1 – Data Protection Addendum (DPA)** (the “DPA” or “Addendum”) sets forth the terms and conditions governing data privacy, data protection, information system integrity, and the Service Provider’s use of data, as mandated by State and federal laws, and as required by the District to protect the information of its students and other District Constituents. By signing the agreement or contract to which this DPA is attached (“Agreement” for purposes of this **Supplement 1**), the Service Provider expressly agrees to its terms and requirements.

1. Definitions. The following definitions apply specifically to this. These definitions are in addition to all other terms defined in the Agreement.

1.1 “*Designated Representative*” means District or Service Provider employees as specified on Schedule 1 to whom all notices required in this DPA will be sent.

1.2 “*District Data*” means any Personally Identifiable Information, Record, Education Record and all Personally Identifiable Information included therein or derived therefrom that is not intentionally made generally available by the District on public websites or publications but is made available directly or indirectly by the District to Service Provider or that is otherwise collected or generated by Service Provider in connection with the performance of the Services.

1.3 “*De-identified Data*” means District Data from which all personally identifiable information, as defined herein, and attributes about such data, have been permanently removed so that no individual identification can be made.

1.4 “*Education Records*” means records, files, documents and other materials that: (a) contain information directly related to a student; and (b) are maintained by the District, or by a party acting for the District such as Service Provider.

1.5 “*End User*” means individuals authorized by the District to access and use the Services provided by the Service Provider under the Agreement.

1.6 “*Incident*” means a suspected, attempted, or imminent threat of unauthorized access, use, disclosure, breach, modification, disruption or destruction to or of District Data.

1.7 “*Mine District Data*” means the act of searching through, analyzing, accessing, or extracting District Data, metadata, or information not necessary to accomplish the Services or purpose(s) of this Agreement for the benefit of the District.

1.8 “*Personally Identifiable Information*” or “*PII*” means information and metadata that, alone or in combination, is linked or linkable to a specific student so as to allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. Personally identifiable information includes but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family members; (c) the address or phone number of the student or student’s family; (d) personal identifiers such as the student’s state-assigned student identifier, social security number, student number or biometric record; (e) indirect identifiers such as the student’s date of birth, place of birth or mother’s maiden name; and (f) demographic attributes, such as race, socioeconomic information, and gender. “To the extent it is not already included in the definition hereinabove, PII also includes “personal information” as defined in the Colorado Open Records Act, C.R.S. 24-72-101 *et seq.*; personally identifiable information contained in student “education records” as that term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; “protected health information” as that term is defined in the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103; “nonpublic personal information” as that term is defined in the Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; credit and debit card numbers and/or access codes and other cardholder data and sensitive authentication data as those terms are defined in the Payment Card Industry Data Security Standards; other financial account numbers, access codes, and state- or federal-identification numbers such as driver’s license, passport or visa numbers.”

1.9 “*Record*” means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

1.10 “*Securely Destroy*” means to remove District Data from Service Provider’s systems, paper files, records, databases, and any other media regardless of format, in accordance with the standard detailed in National Institute of Standards and Technology (“NIST”) SP 800-88 Guidelines for Media Sanitization so that District Data is permanently irretrievable in Service Provider’s and its Subcontractors’ normal course of business.

1.11 “*Security Breach*” means an event in which District Data is exposed to unauthorized disclosure, access, alteration or use or a system configuration that results in a documented unsecured disclosure, access,

alteration or use, in a manner not permitted in this DPA, which poses a significant risk of financial, reputational or other harm to the affected End User or the District.

1.12 “*Services*” means any goods or services acquired by the District from the Service Provider, including computer software, mobile applications (apps), and web-based tools accessed by End Users through the Internet or installed or run on a computer or electronic device.

1.13 “*Subcontractor*” means Service Provider’s employees, subcontractors or agents, who Service Provider has engaged to enable Service Provider to perform its obligations under the Agreement, including but not limited to the Subcontractors identified on Schedule 2, as updated by Service Provider from time to time in accordance with the requirements of this DPA.

1.14 “*Student Profile*” means a collection of PII data elements relating to a student of the District.

2. Rights and License in and to District Data

District owns all rights, title, and interest in and to District Data and any and all now known or hereafter existing Intellectual Property rights associated therewith, and any derivative works thereof or modifications thereto, including without limitation, De-identified Data. The District hereby grants to Service Provider a limited, nonexclusive license to use District Data solely for the purpose of performing its obligations specified in the Agreement. This Agreement does not give Service Provider any rights, title, or interest implied or otherwise, to District Data or De-identified Data, except as expressly stated in the Agreement.

3. Data Privacy

3.1 Use of District Data. Service Provider shall use District Data only for the purpose of performing the Services and fulfilling its duties under the Agreement.

3.2 Prohibited Uses of District Data. With the exception of De-identified Data that the District has agreed in writing to allow Service Provider to use as specified in Section 3.5, Service Provider shall **NOT**:

3.2.1 Use, sell, rent, transfer, distribute, alter, Mine, or disclose District Data (including metadata) to any third party without the prior written consent of the District, except as required by law;

3.2.2 Use District Data for its own commercial benefit, including but not limited to, advertising or marketing of any kind directed toward children, parents, guardians, or District employees, unless such use is specifically authorized by this Agreement or otherwise authorized in writing by the District;

3.2.3 Use District Data in a manner that is inconsistent with Service Provider’s privacy policy;

3.2.4 Use District Data to create a Student Profile other than as authorized or required by the Agreement to perform the Services; and

3.2.5 Store District Data outside the continental United States unless Service Provider has given the District Designated Representative advance written notice of where and how the servers are housed, managed, and secured, and that the security standards required herein can be achieved.

3.3 Qualified FERPA Exception. If Service Provider will have access to Education Records, Service Provider acknowledges that, for the purposes of this Agreement, pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and its implementing regulations, 34 C.F.R. Part 99 (“FERPA”), it will be designated as a “school official” with “legitimate educational interests” in the District Education Records and PII disclosed pursuant to the Agreement, and Service Provider agrees to abide by the FERPA limitations and requirements imposed on school officials. Service Provider will use the Education Records only for the purpose of fulfilling its duties under the Agreement for District’s and its End Users’ benefit, and shall not share District Data with or disclose it to any third party except as provided for in the Agreement, as required by law, or if authorized in writing by the District. Service Provider warrants and represents that during the five-year period preceding the Effective Date of this Agreement, it has not been found in violation of FERPA by the Family Policy Compliance Office.

3.4 Subcontractor Use of District Data. To the extent necessary to perform its obligations specified in the Agreement, Service Provider may disclose District Data to Subcontractors pursuant to a written agreement, specifying the purpose of the disclosure and providing that: (a) Subcontractor shall not disclose District Data, in whole or in part, to any other party; (b) Subcontractor shall not use any District Data to advertise or market to students or their parents/guardians; (c) Subcontractor shall access, view, collect, generate and use District Data only to the extent necessary to assist Service Provider in performing its obligations specified in the Agreement; (d) at the conclusion of its/their work under its/their subcontract(s) Subcontractor shall, as directed by the District through Service Provider, Securely Destroy all District Data in its/their possession, custody or control, or return such District Data to the District, at the election of the District; (e) Subcontractor shall indemnify the District in accordance with the terms set forth in Section 10 herein below; and (f) Subcontractor shall utilize appropriate administrative, physical and technical safeguards in accordance with industry standards and best practices to secure District Data from

unauthorized disclosure, access and use. Service Provider shall ensure that its employees and Subcontractors who have potential access to District Data have undergone appropriate background screening, to the District's satisfaction, and possess all needed qualifications to comply with the terms of this DPA. Service Provider shall also ensure that its Subcontractors comply with the insurance requirements specified in Section 12 of this DPA.

3.5 Use of De-identified Data. If District consents in writing on the form attached as Schedule 3, Service Provider may use De-identified Data for purposes of research, the improvement of Service Provider's products and services, and/or the development of new products and services. In no event shall Service Provider or Subcontractors re-identify or attempt to re-identify any De-identified Data or use De-identified Data in combination with other data elements or De-identified Data in the possession of a third-party affiliate, thereby posing risks of re-identification.

3.6 Privacy Policy Changes. Prior to making a material change to Service Provider's privacy policies, Service Provider shall send District's Designated Representative written notice, which includes a clear explanation of the proposed changes.

4. Data Security

4.1 Security Safeguards. Service Provider shall store and process District Data in accordance with commercial best practices, including implementing appropriate administrative, physical, and technical safeguards that are no less rigorous than those outlined in SANS Top 20 Security Controls, as amended, to secure such data from unauthorized access, disclosure, alteration, and use. Service Provider shall ensure that all such safeguards, including the manner in which District Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with all applicable federal and state data protection and privacy laws, regulations and directives, including without limitation C.R.S. § 22-16-101 *et seq.*, as well as the terms and conditions of this DPA. Without limiting the foregoing, and unless expressly agreed to the contrary in writing, Service Provider warrants that all electronic District Data will be encrypted in transmission and at rest in accordance with NIST Special Publication 800-57, as amended.

4.2 Risk Assessments. Service Provider shall conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner.

4.3 Audit Trails. Service Provider shall take reasonable measures, including audit trails, to protect District Data against deterioration or degradation of data quality and authenticity.

4.4 Verification of Safeguards. Upon District's written request, Service Provider shall provide or make available to the District for review, the following, verifying Service Provider's administrative, physical and technical safeguards are in compliance with industry standards and best practices: (1) a third-party network security audit report, or (2) certification from Service Provider indicating that an independent vulnerability or risk assessment of the Service Provider's data security program has occurred.

5. Security Incident and Security Breach

5.1 Security Incident Evaluation. In the event of an Incident, Service Provider shall follow industry best practices to fully investigate and resolve the Incident, and take steps to prevent developments that may result in the Incident becoming a Security Breach at Service Provider's expense in accordance with applicable privacy laws.

5.2 Response. Immediately upon becoming aware of a Security Breach, or a complaint of a Security Breach, Service Provider shall notify the District Designated Representative in writing as set forth herein, fully investigate the Security Breach, cooperate fully with the District's investigation of and response to the Security Breach, and use best efforts to prevent any further Security Breach at Service Provider's expense in accordance with applicable privacy laws. Except as otherwise required by law, Service Provider shall not provide notice of the Security Breach directly to individuals whose Personally Identifiable Information was involved, to regulatory agencies, or to other entities, without first providing written notice to the District's Designated Representative.

5.3 Security Breach Report. If the District reasonably determines that Service Provider has committed a Security Breach, then the District may request Service Provider to submit, within seven (7) calendar days from discovery of such breach, a written report, and any supporting documentation, identifying (i) the nature of the Security Breach, (ii) the steps Service Provider has executed to investigate the Security Breach, (iii) what District Data or PII was used or disclosed, (iv) who or what was the cause of the Security Breach, (v) what Service Provider has done or shall do to remediate any deleterious effect of the Security Breach, and (vi) what corrective action Service Provider has taken or shall take to prevent a future Incident or Security Breach. The District reserves the right to require Service Provider to amend its remediation plans.

5.4 Effect of Security Breach. Upon the occurrence of a Security Breach, the District may terminate this Agreement in accordance with District policies. The District may require Service Provider to suspend all Services, pending the investigation and successful resolution of any Security Breach, and Service Provider may be

required to reimburse District all amounts paid for any period during which Services were not rendered, as provided herein. Service Provider acknowledges that, as a result of a Security Breach, the District may also elect to disqualify Service Provider and any of its Subcontractors from future contracts with the District.

5.5 Liability for Security Breach. In addition to any other remedies available to the District under law or equity, Service Provider shall reimburse the District in full for all costs incurred by the District in investigation and remediation of any Security Breach caused in whole or in part by Service Provider or Service Provider's Subcontractors, including but not limited to providing notification to individuals whose Personally Identifiable Information was compromised and to regulatory agencies or other entities as required by law or contract; providing one year's credit monitoring to the affected individuals if the Personally Identifiable Information exposed during the breach could be used to commit financial identity theft; and the payment of legal fees, audit costs, fines, and other fees imposed against the District as a result of the Security Breach.

6. **Response to Legal Orders, Demands or Requests for Data**

6.1 Received by Service Provider. Except as otherwise expressly prohibited by law, Service Provider shall immediately notify the District of any subpoenas, warrants, other legal orders, or demands or requests received by Service Provider seeking District Data; consult with the District regarding its response; cooperate with the District's reasonable requests in connection with efforts by the District to intervene and quash or modify the legal order, demand or request; and, upon the District's request, provide the District with a copy of its response.

6.2 Received by District. If the District receives a subpoena, warrant, or other legal order, demand or request seeking District Data maintained by Service Provider, including but not limited to a request pursuant to the Colorado Open Records Act, C.R.S. § 24-72-100.1 *et seq.*, the District will promptly notify Service Provider and, within two (2) business days, excluding national holidays, Service Provider shall supply the District with copies of the District Data for the District to respond.

6.3 Parent Request. If a parent, legal guardian or student contacts the District with a request to review or correct District Data or PII, pursuant to FERPA or the Student Data Transparency and Security Act, C.R.S. § 22-16-101 *et seq.* (the "Act"), the District will promptly notify Service Provider's Designated Representative and Service Provider shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District, within ten calendar (10) days after receipt of District's notice. Conversely, if a parent, legal guardian or student contacts the Service Provider with a request to review or correct District Data or PII, within ten calendar (10) days after receipt of such notice, Service Provider shall promptly notify the District and shall use reasonable and good faith efforts to assist the District in fulfilling such requests, as directed by the District.

6.4 Access to District Data. District shall have the right to access and retrieve any or all District Data stored by or in possession of Service Provider upon written notice to Service Provider's Designated Representative. If another timeline for response is provided herein, then that, more specific, deadline shall control. Otherwise, Service Provider shall make the District Data available to the District within seven (7) calendar days from the date of request.

7. **Compliance with Applicable Law**

7.1 School Service Contract Providers. If Service Provider provides a "school service," which is defined as an Internet website, online service, online application or mobile application that: (a) is designed and marketed primarily for use in a preschool, elementary school or secondary school; (b) is used at the direction of District teachers or other District employees; and (c) collects, maintains or uses District Data or PII, then Service Provider is a "school service contract provider" under the Act. Schedule 5 attached hereto and incorporated herein lists the following and is true and correct as of the Effective Date: (a) the data elements of District Data or PII that Service Provider collects, generates or uses pursuant to the Agreement; (b) the educational purpose for which Service Provider collects and uses the District Data; (c) Service Provider's policies regarding retention and disposal of District Data; (d) how Service Provider uses, shares or discloses the District Data; and (e) a statement whether Service Provider's Agreement has ever been terminated by another school district for failure to comply with the same or substantially similar security obligations as those set forth herein. Service Provider shall update this information by sending to the District updates to Schedule 5 as necessary to maintain accuracy. The updates shall be in a format acceptable to the District or that is easily accessible through Service Provider's website in language easily understandable to a layperson, updates to this Schedule 5 as necessary to maintain accuracy. District reserves the right to terminate this Agreement, as specified in Section 8, should the District receive information after the Effective Date that significantly modifies Service Provider's representations made in this Section 7.1.

7.2. Children's Online Privacy and Protection Act. In performance of the Services required by the Agreement, if Service Provider collects personal information (as defined in the Children's Online Privacy and Protection Act of 1998, 5 U.S.C. 6501 to 6505, and its implementing regulations) from children under thirteen (13)

years of age, Service Provider warrants, represents, and covenants that such collection is and shall be for the use and benefit of the District and for no other commercial purpose. Service Provider has provided District with full notice of its collection, use, and disclosure practices.

7.3 Compliance with Laws. Service Provider warrants that it will abide by all applicable laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction over the Services including but not limited to: COPPA; FERPA; the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 160.103, and Health Information Technology for Economic and Clinical Health Act, Gramm-Leach-Bliley Financial Modernization Act of 1999, 15 U.S.C. 6809; Payment Card Industry Data Security Standards; Protection of Pupil Rights Amendment, 20 U.S.C. 1232h, 34 C.F.R. Part 98; Americans with Disabilities Act, and Federal Export Administration Regulations.

8. Termination

8.1 Term. This DPA will become effective upon the Agreement Effective Date. Subject to Sections 8.2 and 12.3, this DPA will automatically terminate without any further action of the Parties upon the termination or expiration of the Agreement between the Parties or successful completion of the Services. Alternatively, this DPA shall also be revived and be of full force and effect during any Renewal Term.

8.2 Termination by the District. In addition to the termination provisions in the main body of the Agreement, the following applies:

8.2.1 The District may immediately terminate the Agreement in accordance with District policies if, at any time, the District determines in its sole discretion, that Service Provider has breached any of the requirements of this DPA.

8.2.2 The District may terminate the Agreement if District receives information that Service Provider has failed to comply with the same or substantially similar security obligations as set forth herein with another school district.

8.2.3 The District may terminate the Agreement if the District receives information after execution of this DPA, that any of Service Provider's representations or warranties have substantially changed after execution of this DPA, including but not limited to the terms of Service Provider's privacy policy.

9. Data Transfer Upon Termination or Expiration

9.1 Destruction or Return of District Data. With the exception of De-identified Data that District has specifically agreed in writing to allow Data Recipient to use after termination or expiration of this Agreement, or District Data for which Data Recipient has specifically obtained consent from the parent, legal guardian or student to keep, within thirty (30) calendar days after termination or expiration of this Agreement, Data Recipient shall ensure that all District Data and PII that Data Recipient collected, generated or inferred pursuant to the Third Party Agreement ("Third Party Agreement Data"), is securely returned or Securely Destroyed, as directed by the District. In the event that the District requests destruction, Data Recipient agrees to Securely Destroy all District Data and Third Party Agreement Data that is in its possession and cause its Subcontractors to Securely Destroy all District Data and Third Party Agreement Data that is in the possession of any Subcontractors. If the District requests return, Data Recipient shall securely return all District Data and Third Party Agreement Data to the authorized person specified by the District, using the methods requested by the District, in its discretion. The Data Recipient shall promptly certify in writing to District that such District Data and Third Party Agreement Data has been disposed of or returned securely, using the form attached hereto as Schedule 4.

9.2 Transfer and Destruction of District Data. If the District elects to have all District Data or Contract Data that is in Service Provider's possession or in the possession of Service Provider's Subcontractors transferred to a third party designated by the District, such transfer shall occur within a reasonable period of time but no later than thirty (30) calendar days after expiration or termination of this Agreement, and without significant interruption in service or access to such District Data. Service Provider shall work closely with such third party transferee to ensure that such transfer/migration uses facilities and methods are compatible with the relevant systems of the District or its transferee, and to the extent technologically feasible, that the District will have reasonable access to District Data during the transition. District will pay all costs associated with such transfer, unless such transfer is as the result of termination of this Agreement following Service Provider's breach of the terms of this Agreement. Upon successful transfer of District Data, as confirmed in writing by the District's Designated Representative, Service Provider shall Securely Destroy all District Data in accordance with Section 9.1.

9.3 Response to Specific Data Destruction or Return Requests. Service Provider shall Securely Destroy or return any specific District Data or Contract Data that is in its possession or in the possession of its Subcontractors within five (5) business days, excluding national holidays, after receiving a written request from the District.

10. Indemnification

Service Provider shall indemnify and hold District and its directors, employees, board members and agents from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, award, penalties, fines, costs or expenses, including attorneys' fees, the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, arising out of or resulting from any third-party claim against District or its directors, employees, board members and agents arising out of or resulting from Service Provider's failure to comply with any of its obligations under Sections 3, 4, 5, and 9 of this DPA. These indemnification duties shall survive termination or expiration of this Agreement.

11. **Insurance.** In addition to the insurance requirements set forth in the main body of the Agreement, the following apply:

11.1 **Type.** Service Provider shall purchase and maintain during the term of this Agreement Technology Errors and Omissions/Professional Liability Insurance, including Network Security and Privacy Liability Insurance. Such policy shall cover professional misconduct or lack of ordinary skill in providing services, systems and/or product as defined in the scope of services of this Agreement. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Service Provider warrants that any retroactive date under the policy shall precede the effective date of this Agreement, and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed. If such insurance is maintained on an occurrence form basis, Service Provider shall maintain such insurance for an additional period of one (1) year following termination of this Agreement. If such insurance is maintained on a claims-made basis, Service Provider shall maintain such insurance for an additional period of three (3) years following termination of this Agreement. If Service Provider contends that it maintains other insurance not specified herein that otherwise satisfies these requirements (or otherwise insures the risks described in this section), then Service Provider shall provide proof of same.

11.2 **Coverage.** The insurance required by this Section shall provide coverage for the following risks:

11.2.1 Any error, misstatement, misleading statement, act, omission, neglect, breach of duty or personal injury offense for the Service Provider rendering or failure to render technology services and the failure of the Service Provider's technology products to perform the function or serve the purpose intended.

11.2.2 Liability arising from theft, dissemination and/or use of District Data stored or transmitted in electronic form.

11.2.3 Network Security Liability arising from the unauthorized access to, use of or tampering with computer systems including hacker attacks, inability of an authorized third party to gain access to Service Provider's services including denial of service, unless caused by a mechanical or electrical failure.

11.2.4 Liability arising from the introduction of a computer virus, malware or ransomware into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer-related property and the data, software, and programs thereon.

11.3 **Additional Requirements.** In addition to the foregoing requirements, the policy shall provide a waiver of subrogation in favor of the District and shall be endorsed to include the following additional insured language: "Jefferson County School District, and its elected officials, trustees, employees, and agents, shall be named as additional insureds with respect to liability arising out of the activities performed by, or on behalf of the Service Provider." The policy shall be for the following amounts:

For Agreements with a contract price of \$500,000 or less:		
Minimum Limits:		
	Per Loss	\$3,000,000
	Aggregate	\$3,000,000
For Agreements with a contract price exceeding \$500,000:		
Minimum Limits:		
	Per Loss	\$5,000,000

Aggregate	\$5,000,000
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12. Miscellaneous

12.1 No End User Agreements. In the event that the Service Provider enters into terms of use agreements or other agreements or understandings, whether electronic, click-through, verbal or in writing, with End Users, the parties agree that in the event of a conflict between the terms of any such agreement and this DPA, the terms of this DPA and the Agreement, in that order of precedence, shall control.

12.2 Public Inspection of Agreement. Service Provider acknowledges and agrees that this Agreement and all documents Service Provider provides District as required herein, are public records for purposes of the Colorado Open Records Act, C.R.S. § 24-72-100.1 *et seq.* and shall at all times be subject to public inspection.

12.3 Survival. The Service Provider's obligations under Sections 3, 4, 5, 6, 9, and 10, and any other obligations or restrictions that expressly or by their nature are to continue after termination, shall survive termination of this Agreement for any reason until all District Data has been returned or Securely Destroyed.

12.5 Immunities. The District retains all of its rights, privileges and immunities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*

12.8 Schedules. The following schedules are attached hereto, or shall be attached hereto, and are specifically made a part hereof by this reference:

<u>Schedule 1 --</u> Designated Representatives	<u>Schedule 2 --</u> Subcontractors	<u>Schedule 3 --</u> Written Consent to Maintain De- identified Data	<u>Schedule 4 --</u> Certification of Destruction\Return of District Data	<u>Schedule 5 --</u> Data Elements
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SCHEDULE 1
Designated Representatives

DISTRICT REPRESENTATIVE

Betty Standley
Director of Purchasing
1829 Denver West Dr. Bldg 27
Golden, CO 80401
Betty.Standley@jeffco.k12.co.us

Chris Paschke
Director of IT Security
1829 Denver West Dr. Bldg 27
Golden CO 80401
Chris.Paschke@jeffco.k12.co.us

**SERVICE PROVIDER
REPRESENTATIVE**

(same as in Agreement if blank)

Name: Ben Bentzin

Title: CEO

Address: 1101 W. 34th Street #213

Phone: 512-848-8044

E-mail: jen@ihtusa.com

SCHEDULE 2
Subcontractors

Service Provider shall update this information as necessary to maintain accuracy and shall send revised attachments, exhibits or schedules to the District's Authorized Representative.

Name of Subcontractor	Primary Contact Person	Subcontractor's Address	Subcontractor's Phone/email	Purpose of re-disclosure to Subcontractor

SCHEDULE 3
Written Consent to Maintain De-identified Data
(None if blank)

The District hereby gives its consent for Service Provider to retain and use for the stated purpose and period, De-identified Data elements as set forth below:

Description of De-identified Data Elements	Purpose for Retention and Use	Period of Use

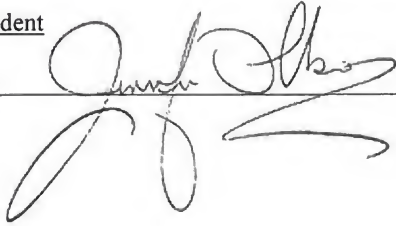
I/We, Jen Ohlson, as [title] President and the authorized representative(s) of the Service Provider do hereby certify that no attempt will be made to re-identify De-identified Data.

Service Provider Name: Interactive Health Technologies, LLC

Service Provider Representative Name: Jen Ohlson

Title: President

Signature: _____ Date: October 23, 2017



SCHEDULE 4
Certification of Destruction\Return of District Data
(To be completed at time of destruction)

I\We, Jen Ohlson, as the authorized representative(s) of the Service Provider do hereby acknowledge and certify under penalty of perjury that [initial next to both subparts of the applicable Part A or Part B]:

Part A - Destruction:

_____ the District Data and PII provided to Service Provider by the District as part of the Data Protection DPA in accordance with federal and state law was destroyed on _____, 20__ by means of [describe destruction methods]: _____.

_____ the District Data and PII provided to Service Provider's Subcontractors as part of the Data Protection DPA in accordance with federal and state law was destroyed as set forth below:

<i>Name of Subcontractor</i>	<i>Date of Deletion</i>	<i>Destruction Method</i>

Part B - Return: [If this option is elected by the District, then Service Provider shall also complete Part A.]

_____ the District Data and PII provided to Service Provider by the District as part of the Data Protection DPA in accordance with federal and state law was returned or transferred to the District's Authorized Representative or other person or entity designated by the District, on _____, 20__ to _____, by means of [describe destruction methods]: _____.

_____ the District Data and PII provided to Service Provider's Subcontractors as part of the Data Protection DPA in accordance with federal and state law was returned or transferred to the District's Authorized Representative or other person or entity designated by the District as set forth below:

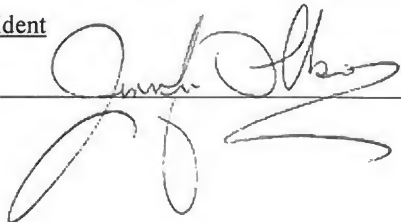
<i>Name of Subcontractor</i>	<i>Date of Return</i>	<i>Return / Transfer Method</i>

Service Provider Name: Interactive Health Technologies, LLC

Service Provider Representative Name: Jen Ohlson

Title: President

Signature: _____ Date: October 23, 2017



SCHEDULE 5

Data Elements

Please see the included "Application-Hosting Vendor Assessment Policy" completed and previously approved by JeffCo on the following pages

1. Service Provider collects, generates or uses pursuant to the Agreement the following data elements of District Data or PII:
2. Service Provider collects and uses the District Data for the following educational purposes:
3. Service Provider's policies regarding retention and disposal of District Data are as follows:
4. Service Provider uses, shares or discloses the District Data in the following manner:
5. Has Service Provider's agreement has ever been terminated by another school district for failure to comply with the same or substantially similar security obligations as those set forth in this Agreement?
☐ Yes ☒ No.
If yes, describe:

SUPPLEMENT 2 FEDERAL FUNDING PROVISIONS

(Not applicable if no federal funding – see Cover and Signature Page)

The provisions of this **Supplement 2 – Federal Funding Provisions** are incorporated into and made a part of the agreement or contract to which this **Supplement 2** is attached (the “Contract” for purposes of this Supplement). The District has received federal funding for all or part of the Contract purchase. The grant or other funding agreement between the District and the federal government requires that certain federal provisions be made a part of the Contract. The District may change any of these provisions at any time in the District’s discretion or at the request of an involved federal agency as approved by the Office of Federal Procurement Policy, or as otherwise mandated by federal law.

The party that is identified in the Contract as entering into the Contract with the District (the “Contractor” for purposes of this Supplement) certifies that, to the best of the Contractor’s knowledge and belief, the Contractor, its principals, and its subcontractors are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency (*see*, System for Award Management (SAM) at <https://www.sam.gov/>). The Contractor SHALL COMPLY with the provisions of law listed below, all of which are hereby incorporated into the Contract and are applicable as specified:

1. **Equal Employment Opportunity** – *Applicable to contracts meeting the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3.* Equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246 “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” Required by 200 CFR §326, Appendix II to Part 200 (C).
2. **Davis-Bacon Act** – *When required by federal program legislation, applicable to construction contracts of more than \$2,000.* Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR Part 5--Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). In accordance with the statute, contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The District will place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The District will report all suspected or reported violations to the Federal awarding agency. Required by 200 CFR §326, Appendix II to Part 200 (D).
3. **Copeland “Anti-Kickback” Act** - *When required by federal program legislation, applicable to construction contracts of more than \$2,000* (18 U.S.C. 874 and 40 U.S.C. 276c)- “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR Part 3--Contractors and subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Act provides that the Contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The District will report all suspected or reported violations to the Federal awarding agency. Required by 200 CFR §326, Appendix II to Part 200 (D).
4. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 327-333) – *Applicable to contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Not applicable to the purchase of supplies and materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.* Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. Required by 200 CFR §326, Appendix II to Part 200 (E).

5. **Rights to Inventions Made Under a Contract or Agreement** – *Applicable where the federal award funding the contract meets the definition of “funding agreement” under 37 CFR §401.2(a).* Where the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the Contractor and its subcontractors must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Required by 200 CFR §326, Appendix II to Part 200 (F).
6. **Clean Air Act** (42 U.S.C. 7401 et seq.) and the **Federal Water Pollution Control Act** (33 U.S.C. 1251 et seq.), as amended. – *Applicable to contracts and subcontracts in amounts in excess of \$150,000.* “Contracts and subgrants of amounts in must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 - 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 - 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).” 200 CFR §326, Appendix II to Part 200 (G). Required by 200 CFR §326, Appendix II to Part 200 (G).
7. **Debarment and Suspension** (E.O. 12549 and E.O. 12689). – “A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ‘Debarment and Suspension.’ SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.” 200 CFR §326, Appendix II to Part 200 (H). Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principal employees. Required by 200 CFR §326, Appendix II to Part 200 (H).
8. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352). *Applicable to contractors who apply or bid for an award of \$100,000 or more.* Contractors shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. The disclosures are forwarded from tier to tier up to the recipient. Required by 200 CFR §326, Appendix II to Part 200 (I).
9. **Procurement of Recovered Materials.** *Applicable where the purchase price of an item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.* §6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Required by 200 CFR §326, Appendix II to Part 200 (H).
10. **Access to Records** – *Applies to all negotiated contracts except those for less than the small purchase threshold.* The District and the federal government, or any of their duly authorized representatives, must have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions. The contractor shall make access available. The Contractor shall place the same provision (requiring access to records) in any subcontract which would have to have this provision were it awarded by the District. Required by [____] 3015.183].
11. **Retention of Records** – The Contractor shall retain all required records for three years after final payment under the Contract and all subcontracts (if any) are made and all other pending matters are closed. If any audit, litigation, or other action involving the records is started before the end of the three-year period, the Contractor shall retain the records until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later. Required by [____] 3015.138].
12. **Age Discrimination Act of 1975**, as amended 42 U.S.C. 6101, et seq.
13. **Age Discrimination in Employment Act of 1967** 29 U.S.C., 621-634.

14. **Americans with Disabilities Act of 1990 (ADA)** 42 U.S.C. 12101, et seq.
15. **Equal Pay Act of 1963** 29 U.S.C. 206(d).
16. **Federal Water Pollution Control Act**, as amended 33 U.S.C. 1251, et seq.
17. **Immigration Reform and Control Act of 1986** 8 U.S.C. 1324b.
18. **Section 504 of the Rehabilitation Act of 1973** as amended 29 U.S.C. 794.
19. **Title VI of the Civil Rights Act of 1964**, as amended 42 U.S.C. 2000d, et seq.
20. **Title VII of the Civil Rights Act of 1964** 42 U.S.C. 2000e.
21. **Title IX of the Education Amendments of 1972** as amended 20 U.S.C. 1681.
22. **State Laws Civil Rights Division Section 24-34-301**, CRS, et seq.
23. **Health Insurance Portability & Accountability Act of 1996 ("HIPAA")**. – *Applicable to medical information.* Pursuant to federal law and regulations governing the privacy of certain health information, the Contractor, to the extent applicable, shall comply with the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-1320d-8 and its implementing regulations promulgated by the U.S. Department of Health and Human Services, 45 C.F.R. Parts 160 and 164 (the "Privacy Rule") and other applicable laws, as amended.
24. **Confidentiality of Records** – The Contractor shall protect the confidentiality of all records and other materials containing personally identifying information that are maintained in accordance with the Agreement and comply with HIPAA and its rules and regulations. Except as provided by law, no information in possession of the contractor about any individual constituent shall be disclosed in a form including identifying information without the prior written consent of the person in interest, a minor's parent, or guardian. The Contractor shall have written policies governing access to, duplications and dissemination of, all such information. The Contractor shall advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. The Contractor shall provide its employees agents and subcontractors, if any, with a copy of or written explanation of these confidentiality requirements before access to confidential data is permitted. No confidentiality requirements contained in the Contract shall negate or supersede the provisions of the federal Health Insurance Portability and Accountability Act of 1996.
25. **Conflicts of Interest**. – The Contractor shall maintain a written code of standards governing the performance of its employees engaged in the award and administration of the Contract. No employee, officer, or agent of the Contractor shall participate in the selection, or in the award or administration of a contract or subcontract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - The employee, officer or agent;
 - Any member of the employee's immediate family;
 - The employee's partner; or
 - An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Contractor's, subcontractor's, or sub-grantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor, potential contractors, or parties to sub-agreements.
26. **Energy Efficiency** – The Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871). The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
27. **Termination** – The District, by written notice, may terminate the Contract at any time, in whole or in part, when it is in the District's or federal government's interest. If this Contract is terminated for any reason, the District shall be liable only for payment under this Contract for services rendered or goods provided before the effective date of termination.
28. **Materials** -- If applicable, all materials peculiar to the Work of Contractor under this Contract is the property of the District, for its exclusive use and re-use without further compensation and without restriction. Upon completion of the Work, or at such other time as the District requires, Contractor shall deliver to the District a complete, reproducible set of all such materials. For copyright ownership under the Federal Copyright Act, Contractor conveys to District and waives all rights, title and interest to all such materials in written, electronic or other form, prepared under this Agreement. District shall have worldwide reprint and reproduction rights in all forms and in all media, free of any claims by the contractor.
29. **Cost-Reimbursements in Food Contracts**. *Applicable to food service cost-reimbursable contracts subject to contracts.* The provisions concerning cost reimbursements set forth in 7 CFR §210.21 (f) are hereby incorporated herein. Required by 7 CFR §210.21.

